

1 DAVID ARONOFF (SBN 125694)
2 DAronoff@foxrothschild.com
3 JOSHUA BORNSTEIN (SBN 311658)
4 JBornstein@foxrothschild.com
5 FOX ROTHSCHILD LLP
6 10250 Constellation Blvd., Suite 900
7 Los Angeles, CA 90067
8 Tel.: 310-598-4150
9 Fax: 310-556-9828

10 Attorneys for Defendants
11 2107697 ALBERTA LTD., SCORE
12 G PRODUCTION FILMS INC.,
13 ADAM SCORGIE, and ELECTRIC
14 PANDA ENTERTAINMENT INC.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 ZUFFA, LLC, a Nevada limited
18 liability company, d/b/a ULTIMATE
19 FIGHTING CHAMPIONSHIP, and
20 ULTIMATE FIGHTING
21 PRODUCTIONS, LLC, a Nevada
22 limited liability company,

23 Plaintiffs,

24 v.

25 2107697 ALBERTA LTD., a
26 Canadian corporation, d/b/a SCORE G
27 PRODUCTIONS; ADAM SCORGIE,
28 a Canadian individual; ELECTRIC
PANDA ENTERTAINMENT INC., a
Canadian corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 2:22-CV-05864-RGK-SK

Hon. Judge R. Gary Klausner

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

DEMAND FOR JURY

Complaint Filed: August 18, 2022

Defendants 2107697 ALBERTA LTD. (“2107697 Alberta”), SCORE G PRODUCTION FILMS INC. (incorrectly named herein as 2107697 Alberta Ltd. d/b/a Score G. Productions) (“Score G”), ADAM SCORGIE (“Scorgie”), and ELECTRIC PANDA ENTERTAINMENT INC. (“Electric Panda”) (collectively, “Defendants”) herein answer the Complaint (Dkt. No. 1) of plaintiffs ZUFFA, LLC d/b/a ULTIMATE FIGHTING CHAMPIONSHIP (“UFC”) and ULTIMATE FIGHTING PRODUCTIONS, LLC (collectively, “Plaintiffs”) as follows:

JURISDICTION AND VENUE

1. Defendants admit that Plaintiffs have filed the above-captioned lawsuit for alleged copyright infringement regarding the documentary film entitled, *Bisping: The Michael Bisping Story* (the “Film”) concerning the former UFC fighter Michael Bisping (“Bisping”), but deny any and all wrongdoing as alleged in the Complaint or otherwise, including Plaintiff’s allegations of copyright infringement and violations of the Digital Millennium Copyright Act (“DMCA”).

2. Admitted.

3. Admitted.

RESPONSE TO FACTUAL ALLEGATIONS

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and deny them on that basis.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and deny them on that basis.

6. Defendants admit that Exhibit “A” to the Complaint purports to be a chart listing the alleged copyright registration numbers of the broadcasts at issue herein (“the Broadcasts”) but lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 or Exhibit “A” and deny them on that basis.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and deny them on that basis.

1 8. Defendants admit that no express licenses were obtained from Plaintiffs
2 authorizing the use in the Film of certain clips (“the Clips”) from the Broadcasts.
3 Except as so expressly admitted, Defendants deny each and every remaining allegation
4 contained in Paragraph 8.

5 9. Defendants admit that the Film speaks for itself with regard to its content,
6 including as to its length, the number of Clips, the runtimes of the Clips, and the amount,
7 substantiality, purpose, and character of the uses of the Clips. Defendants lack
8 knowledge or information sufficient to form a belief as to the truth of the allegation that
9 Clips from 24 different copyrighted works owned by Plaintiffs were used in the Film
10 and denies it on that basis. Except as so expressly admitted and denied, Defendants
11 deny each and every remaining allegation contained in Paragraph 9.

12 10. Defendants admit that the Film incorporates Clips of UFC fights involving,
13 among others, Bisping, Jose Aldo, Conor McGregor, Brock Lesnar, Frank Mir II, and
14 Dan Henderson, and that the Film speaks for itself with regard to its content, including
15 as to the amount, substantiality, purpose, and character of its Clip usages. Except as so
16 admitted, Defendants lack knowledge or information sufficient to form a belief as to the
17 truth of the remaining allegations of Paragraph 10 and deny them on that basis.

18 11. Defendants deny the allegations of Paragraph 11.

19 12. Defendants admit that the use of the Clips in the Film is protected by fair
20 use under 17 U.S.C. § 107 and 37 C.F.R. § 201.40, and that the Film speaks for itself
21 with regard to its content, including as to the amount, substantiality, purpose, and
22 character of its Clip usages. Except as so admitted, Defendants lack knowledge or
23 information sufficient to form a belief as to the truth of the remaining allegations of
24 Paragraph 12 and deny them on that basis.

25 13. Defendants admit that Score G and Electric Panda are both based in
26 Canada but engage in distribution and production activities in California and elsewhere
27 in the United States, and Score G admits that it is aware of the U.S. Copyright Act of
28

1 1976. Except as so expressly admitted and denied, Defendants deny each and every
2 remaining allegation contained in Paragraph 13.

3 14. Defendants deny each and every allegation of Paragraph 14.

4 **PARTIES**

5 15. Defendants lack knowledge or information sufficient to form a belief as to
6 the truth of the allegations of Paragraph 15 and deny them on that basis.

7 16. Defendants lack knowledge or information sufficient to form a belief as to
8 the truth of the allegations of Paragraph 16 and deny them on that basis.

9 17. Defendants admit that defendant 2107697 Alberta is a numbered Alberta
10 corporation with its principal place of business in Edmonton, Alberta, Canada.
11 Defendants deny that 2107697 Alberta is doing business as Score G, which is a
12 separately incorporated company and is not a d/b/a of 2107697 Alberta.

13 18. Defendants admit that defendant Scorgie is a Canadian documentary
14 filmmaker based in Edmonton, Alberta, Canada.

15 19. Defendants admit that defendant Electric Panda is a Canadian corporation
16 with its principal place of business in Toronto, Ontario and that its website speaks for
17 itself with regard to the content that is posted therein.

18 20. Defendants lack knowledge or information sufficient to form a belief as to
19 the truth of the allegations of Paragraph 20 and deny them on that basis.

20 **RESPONSE TO FURTHER ALLEGATIONS**

21 21. Defendants admit the Film was released in March 2022, and that it is
22 available in the United States and internationally.

23 22. Defendants admit the Film is or was available digitally for rent or purchase
24 in the United States on certain platforms, including Amazon Video, Vudu, and Redbox.
25 Except as so admitted, Defendants lack knowledge or information sufficient to form a
26 belief as to the truth of the remaining allegations of Paragraph 22 and deny them on that
27 basis.
28

23. Defendants admit the Film is or was available digitally for rent or purchase in certain foreign markets such as Canada, the United Kingdom and Spain. Except as so admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23 and deny them on that basis.

24. Defendants admit the Film is available on DVD and Blu-ray and that it may be licensed to additional television and streaming providers. Except as so admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24 and deny them on that basis.

25. Defendants admit that Electric Panda received a financial benefit from the production and distribution of the Film. Except as so admitted, Defendants deny the remaining allegations of Paragraph 25.

26. Defendants deny each and every allegation of Paragraph 26.

FIRST CLAIM FOR RELIEF:

ALLEGED COPYRIGHT INFRINGEMENT

27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27, including footnote 2 of the Complaint, and deny them on that basis.

28. Defendants admit that no express licenses were obtained from Plaintiffs authorizing the use in the Film of Clips from the Broadcasts. Except as so admitted, Defendants deny each and every remaining allegation of Paragraph 28.

29. Defendants deny each and every allegation of Paragraph 29.

30. Defendants deny each and every allegation of Paragraph 30.

31. Defendants deny each and every allegation of Paragraph 31.

32. Defendants deny each and every allegation of Paragraph 32.

33. Defendants deny each and every allegation of Paragraph 33.

34. Defendants deny each and every allegation of Paragraph 34.

35. Defendants deny each and every allegation of Paragraph 35.

SECOND CLAIM FOR RELIEF:

ALLEGED VIOLATION OF THE DMCA

36. The allegations in Paragraph 36 constitute legal conclusions to which no response is required. Defendants, however, deny all allegations of wrongdoing.

37. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 and deny them on that basis.

38. Defendants deny each and every allegation of Paragraph 38.

39. Defendants deny each and every allegation of Paragraph 39.

40. Defendants deny each and every allegation of Paragraph 40.

41. Defendants deny each and every allegation of Paragraph 41.

42. Defendants deny each and every allegation of Paragraph 42.

43. Defendants deny each and every allegation of Paragraph 43.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses, but without conceding or acknowledging that they bear the burden of proof, persuasion or presentation of evidence on any of these issues, Defendants allege:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint, and each and every cause of action set forth therein, fails to state facts sufficient to constitute a claim for relief against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Fair Use)

Plaintiffs' claims are barred in whole or in part because, to the extent any of Defendants allegedly copied any copyright-protected material owned by Plaintiffs, such use constituted "fair use" under Section 107 of the Copyright Act, 17 U.S.C. § 107.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(First Amendment)**

3 Plaintiffs' claims are barred in whole or in part because, to the extent any of
4 Defendants allegedly copied any copyright-protected material owned by Plaintiffs, such
5 use is shielded by the protections of the First Amendment to the U.S. Constitution.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Exemption to Prohibition Against DMCA Circumvention)**

8 Plaintiffs' claims are barred in whole or in part because the Film is a documentary
9 motion picture that is exempted from the prohibition against circumvention under 37
10 C.F.R. § 201.40 as determined by the Librarian of Congress pursuant to the rulemaking
11 authority granted under 17 U.S.C. § 1201(a)(1).

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Advice of Counsel)**

14 Plaintiffs' claims are barred in whole or in part because, to the extent any
15 Defendant allegedly copied any copyright-protected material owned by Plaintiffs,
16 Defendants acted in good faith and reasonably relied on the advice of counsel.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Innocent Intent)**

19 Plaintiffs' claims are barred in whole or in part because, to the extent any
20 Defendant allegedly copied any copyright-protected material owned by Plaintiffs, the
21 infringement was innocent and not willful.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 **(De Minimis Use)**

24 Plaintiffs' claims are barred in whole or in part to the extent that any alleged
25 copying by Defendants of copyright-protected material owned by Plaintiffs was
26 insubstantial and *de minimis*, and therefore is not subject to liability.

EIGHTH AFFIRMATIVE DEFENSE**(Lack of Registration)**

Plaintiffs' claims are barred in whole or in part because to the extent Plaintiffs have failed to comply with the provisions of 17 U.S.C. §§ 411(a) and/or 412 as to any of their alleged copyrights, Plaintiffs are precluded from prosecuting this action and/or from recovering statutory damages or attorneys' fees.

NINTH AFFIRMATIVE DEFENSE**(Copyright Formalities)**

Plaintiffs' claims are barred in whole or in part, to the extent that the copyrights that Plaintiffs purport to own were not properly registered and/or that such registrations are invalid or were fraudulently or otherwise improperly obtained.

TENTH AFFIRMATIVE DEFENSE**(Speculative and Conjectural Harm)**

Plaintiffs' claims are barred in whole or in part, to the extent Plaintiffs' alleged damages are entirely conjectural and speculative.

ELEVENTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

Plaintiffs' claims are barred in whole or in part, to the extent Plaintiffs failed to undertake reasonable efforts to mitigate their alleged damages.

TWELFTH AFFIRMATIVE DEFENSE**(Implied License)**

Plaintiffs' claims are barred in whole or in part to the extent any alleged copying by Defendants of any copyright-protected material owned by Plaintiffs was impliedly licensed, consented to, or otherwise authorized or ratified by the conduct, statements, actions, or inactions of Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver, Estoppel and Laches)

Plaintiffs' claims are barred in whole or in part to the extent that the conduct, statements, actions or inactions of Plaintiffs, and the reliance thereon by Defendants, gave rise to waiver, estoppel or laches as to any of the claims asserted herein.

FOURTEENTH AFFIRMATIVE DEFENSE

(Other Affirmative Defenses)

Defendants have insufficient information upon which to form a belief as to whether they have additional affirmative defenses. Defendants reserve their right to assert additional affirmative defenses in the event they discover facts upon which such affirmative defenses may be based.

PRAYER FOR RELIEF

WHEREFORE, Defendants prays for relief as follows:

1. That Plaintiffs take nothing by the Complaint, which should be dismissed with prejudice;
2. For judgement entered in favor of Defendants and against Plaintiffs;
3. That Defendants be awarded their reasonable attorneys' fees and costs of suit; and
4. That Defendants be awarded such other and further relief as the Court may deem just and proper.

Dated: October 21, 2022

FOX ROTHSCHILD LLP

By: /s/ David Aronoff

David Aronoff

Joshua Bornstein

Attorneys for Defendants

2107697 ALBERTA LTD.; SCORE G
PRODUCTION FILMS INC.; ADAM
SCORGIE; and ELECTRIC PANDA
ENTERTAINMENT INC.

1
2 **JURY DEMAND**

3 Defendants hereby demand trial by jury on all issues that are so triable herein.

4
5 Dated: October 21, 2022

FOX ROTHSCHILD LLP

6 By: /s/ David Aronoff
7 David Aronoff
8 Joshua Bornstein
9 Attorneys for Defendants
10 2107697 ALBERTA LTD.; SCORE G
11 PRODUCTION FILMS INC.; ADAM
12 SCORGIE; and ELECTRIC PANDA
13 ENTERTAINMENT INC.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28